

**SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY**

<b>IN RE THE MATTER OF THE</b>	)	
<b>ESTABLISHMENT OF A PILOT</b>	)	
<b>PROGRAM FOR A COMPLEX</b>	)	<b>Administrative Order</b>
<b>CIVIL LITIGATION COURT</b>	)	<b>No. 2002-127</b>
	)	

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**BACKGROUND INFORMATION:**

On October 17, 2002, the Arizona Judicial Council unanimously approved the final report and recommendations of the Committee to Study Complex Litigation, created by Supreme Court Administrative Order No. 2001-122. That report recommends the establishment of a pilot program for a Complex Civil Litigation Court in the Superior Court in Maricopa County. It is anticipated that the program will accelerate the time-to-disposition of complex civil disputes, allow for more effective utilization of court resources, and permit improvements to civil case processing.

On November 22, 2002, the Arizona Supreme Court authorized the establishment of a Complex Civil Litigation Program on a pilot basis in the Superior Court in Maricopa County in Administrative Order No. 2002-107.

**IT IS THEREFORE ORDERED** establishing a Complex Civil Litigation Program in Superior Court in Maricopa County on a pilot basis to run for a period not to exceed two years beginning January 1, 2003 and ending December 31, 2004 as follows:

1. **AUTHORITY TO DESIGNATE CASE COMPLEX.** The Presiding Judge of Superior Court has authority to decide whether a case is complex and should be assigned to the Complex Civil Litigation Court. The Presiding Judge delegates that authority to the Presiding Judge of the Civil Department.
2. **GOVERNED BY THIS ADMINISTRATIVE ORDER.** Any civil case designated by the Civil Department Presiding Judge as a complex civil case and assigned to the Complex Civil Litigation Court shall be governed by this Administrative Order.
3. **RULES OF PROCEDURE APPLICABLE UNDER THIS ORDER.** The rules appearing in Appendix A attached hereto shall apply to cases in the Complex Civil Litigation Court program. (Exhibit A: Rule 8(h), Classification of Civil Actions; Rule 8(i), Complex Civil Litigation Program Designation and Certification Form; Rule 16.3, Initial Case Management

Conference in Cases Assigned to the Complex Civil Litigation Program;  
Rule 39.1, Trial of Cases Assigned to the Complex Civil Litigation  
Program.)

4. **JUDGES AUTHORIZED TO HEAR COMPLEX CIVIL LITIGATION COURT CASES.** The Presiding Judge will appoint a panel of judges, the “Complex Civil Litigation Panel,” for handling Complex Civil Litigation Court Cases.

❖ **Complex Civil Litigation Panel.** Judges Gaines, Albrecht and Fields are designated as Complex Civil Litigation Court Judges authorized to hear complex civil litigation cases. Cases assigned to them by the Presiding Judge of the Civil Department shall remain assigned to them for a period of five years unless the case is dismissed or terminated, and barring any unforeseen circumstances. The Presiding Judge of the Superior Court reserves the right to change judges authorized to hear complex civil litigation cases.

If a civil case is assigned to one of the Complex Civil Litigation Court Judges by the random case assignment process, and it is a Complex Civil Litigation Case, the parties must still follow the procedures in the rules by filing a motion and certificate to designate the case complex with the Presiding Judge of the Civil Department.

❖ **Full Civil Calendars.** The Complex Civil Litigation Court Judges will maintain a full civil calendar in addition to hearing Complex Civil Litigation Court Cases, although their caseload will be adjusted based on their case assignments.

❖ **Notices of Change of Judge.** If a party files a Notice of Change of Judge, the case will be reassigned to a judge designated as a Complex Civil Litigation Court Judge.

5. **COMPLEX CIVIL LITIGATION COURT CASE FEE.** The Clerk of the Superior Court, pending approval and authorization by the Maricopa County Board of Supervisors, shall charge each plaintiff and each defendant in a designated complex case<sup>1</sup>, a complex case fee in the amount of \$500.00. After an action has been designated as a Complex Civil Litigation Court Case, the Clerk shall not file any paper or record, electronically or otherwise, for any proceeding under these rules until the required fees have been paid. The fees shall be subject to the provisions

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<sup>1</sup> Plaintiffs that are husband/wife, parent corporation/subsidiary corporation, or are part of a certified class in a class action lawsuit shall not each be charged. They shall only be charged a one-time fee of \$500.00. For example: (Husband/wife shall be charged \$500.00; parent corporation/subsidiary corporation shall be charged \$500.00; Plaintiffs that are part of a certified class in a class action shall be charged a total of \$500.00)

relating to taxing of costs. The Complex Civil Litigation Court fee is in addition to the filing and response fees currently required to be charged by statute.

**6. PROCEDURE TO DESIGNATE CASE COMPLEX.**

A. **Procedures and Factors:** Rule 8(i) Complex Civil Litigation Program Designation attached as Exhibit A contains the procedures required to designate a case complex. Rule 8(i) also lists the factors in deciding whether a civil action is a complex case. In addition to these factors, the Presiding Judge of the Civil Department may consider factors including, without limitation, the following: 1) need for special judicial management from inception of the action; and, 2) timeliness of the motion or request with regard to potential for effective complex case management in the action.

B. **Complex Cases in Probate, Juvenile or Family Court.** If a Motion and Certificate to Designate a Case Complex is from a department other than the Civil Department, the Presiding Civil Judge shall consult with the Presiding Judge of the department from which the case originated before making a decision regarding whether the case is complex. The Court on its own Motion may also request that the case be designated complex by sending a motion to the Presiding Judge of the Civil Department.

C. **ORIGINAL FILED/COPIES TO:** The original Motion and Certificate to Designate the Case Complex shall be filed with the Clerk of the Superior Court with copies mailed or delivered to the following individuals:

- ❖ Presiding Judge of the Civil Department, currently Judge Margaret Downie;
- ❖ Presiding Judge of the Superior Court, currently Judge Colin Campbell;
- ❖ Judge assigned to the case at the time the Motion to Designate Case Complex is filed.
- ❖ Civil Court Administrator, currently Karen Westover.

D. Complex case designation may be granted or rescinded at any time by the Presiding Judge or that judge's designee.

**7. STATISTICAL TRACKING.** Civil Court Administration is responsible for tracking and monitoring the status of all complex litigation court cases.

**8. ELECTRONIC FILING.** The Superior Court is in the process of publishing a request for proposals to outside vendors to establish an electronic filing (e-filing) system for Complex Civil Litigation Court Cases. It is anticipated that this system will be implemented by spring of 2003. At that time, all complex civil litigation cases filed after that date will be required to be electronically filed. There will not be a paper file. Pending mandatory e-filing, judges designated as Complex Civil Litigation Court Judges may require: 1) the parties to submit the judges copy of papers by electronic mail; and, 2) submit the judge's copy of the briefs on CD ROM disks with hyper-links for access to cited articles and texts. Pending mandatory e-filing, originals of these documents are required to be filed with the Clerk of the Superior Court.

DATED: December 19<sup>th</sup>, 2002.

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Colin Campbell  
Presiding Judge, Superior Court

Original: Clerk of the Superior Court

Copies: Chief Justice Charles E. Jones  
Vice-Chief Ruth V. McGregory  
David K. Byers, Administrative Office of the Courts  
Michael K. Jeanes, Clerk of the Superior Court  
Hon. Margaret H. Downie  
Hon. Kenneth Fields  
Hon. Pendleton Gaines  
J.W. Brown, Superior Court Communications Director

**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

In the Matter of:	)	
	)	
AUTHORIZING A COMPLEX	)	Administrative Order
CIVIL LITIGATION PILOT PROGRAM	)	No. 2002-_____
APPLICABLE IN MARICOPA	)	
COUNTY	)	
_____	)	

On October 17, 2002, the Arizona Judicial Council unanimously approved the final report and recommendations of the Committee to Study Complex Litigation, created by Administrative Order No. 2001-122. That report recommends the establishment of a pilot program for a Complex Civil Litigation Court in the Superior Court in Maricopa County. It is anticipated that the program will accelerate the time-to-disposition of complex civil disputes and permit improvements to the processing of civil cases generally. The Honorable Colin F. Campbell, Presiding Judge of the Superior Court in Maricopa County, has indicated his readiness to implement the program in the near future.

The report proposes several new or amended rules of civil procedure and a new form for use in identifying cases eligible for the program and to promote their effective management by the judiciary.

The report suggests the need for an oversight committee to monitor the program in its pilot phase. The program should be permitted to run for a period of two years to permit a reasonable period of evaluation and adjustment, after which, the Supreme Court can then determine the appropriateness of making the program a permanent feature of civil litigation in Arizona's trial courts.

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution.

IT IS ORDERED authorizing the establishment of a Complex Litigation Program on an experimental basis in the Superior Court of Maricopa County as follows:

**1. RULES OF PROCEDURE APPLICABLE UNDER THIS ORDER.**

The Rules appearing in Exhibit A attached hereto shall apply to cases in the complex litigation pilot program.

**2. REPORTS.**

The presiding judge of the Superior Court in Maricopa County and the Complex Litigation Oversight Committee shall file a joint report on this pilot project to the Supreme Court at its conclusion.

DATED this \_\_\_\_\_ day of October, 2002.

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CHARLES E. JONES  
Chief Justice

**[revised] Rule 8(h). Classification of Civil Actions**

(1) Counsel for plaintiff or petition shall describe in the caption of each complaint or petition filed with the court the nature of the civil action or proceeding, as follows: Tort Motor Vehicle, Tort Non-Motor Vehicle, Contract, Domestic Relations, Eminent Domain or Non-classified Civil, Writ of Garnishment.

(2) Writs of garnishment shall include under the caption whichever of the following notations is applicable:

- (4)A. Federal Exemption.
- (2)B. Enforce order of support.
- (3)C. Enforce order of Bankruptcy Court
- (4)D. Enforce collection of taxes.
- (5)E. Non-earnings.

(3) In those counties in which a complex civil litigation program has been established, in addition to the description required by (1), the caption shall also identify the action as complex if the action meets the criteria listed in Rule 8(i).

**[new] Rule 8(i) Complex Civil Litigation Program Designation**

(1) **Definition.** In those counties in which a complex civil litigation program has been established, a “complex case” is a civil action that requires continuous judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote an effective decision making process by the court, the parties, and counsel.

(2) **Factors.** In deciding whether a civil action is a complex case under subdivision (a), the court shall consider the following factors:

- (A) Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve;
- (B) Management of a large number of witnesses or a substantial amount of documentary evidence;
- (C) Management of a large number of separately represented parties;
- (D) Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court;
- (E) Substantial post judgment judicial supervision;
- (F) The case would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law
- (G) Inherently complex legal issues;
- (H) Factors justifying the expeditious resolution of an otherwise complex dispute;

(I) Any other factor which in the interests of justice warrants a complex designation or as otherwise required to serve the interests of justice.

(3) **Procedure for designating a complex case.** At the time of filing the initial complaint, a plaintiff may designate an action as a complex case by filing a motion and separate certification of complex case identifying the case attributes outlined in (2) justifying the designation. The certification shall be in a form approved by the Supreme Court and must be served on the defendant along with the motion at the time of service of the complaint. Plaintiff's certification, and any controverting certificate of a party represented by an attorney, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign the party's certification of complexity or controverting certification.

The signature of an attorney or party constitutes a certification by the signer that the signer has considered the applicability of Rule 8(i) of the Arizona Rules of Civil Procedure; that the signer has read the certificate of complexity or controverting certificate; that to the best of the signer's knowledge, information and belief, formed after reasonable inquiry, it is warranted; and that the allegation as to complexity is not set forth for any improper purpose. The provisions of Rule 11(a) of these Rules apply to every certification of complexity filed under this Rule.

(4) **Procedure for opposing designation.** If a plaintiff has certified a case complex and the court has not previously declared the action to be a complex case, and the defendant disagrees with the plaintiff's assertion as to complexity, the defendant shall file and serve no later than that party's first responsive pleading a response to plaintiff's motion and a controverting certification that specifies the particular reason for the defendant's disagreement with plaintiff's certificate.

(5) **Designation by defendant or joint designation.** A defendant may designate an action as a complex case if the plaintiff has not done so and if the court has not already made a ruling in this matter by filing a motion and the certification of complex case described in (3) at or before the time of filing defendant's first responsive pleading and serving them upon the plaintiff. The parties may join in designating an action as a complex case by filing a joint motion and certification of complex case with or before the filing of defendant's first responsive pleading.

(6) **Action by court.** The presiding judge of the court or designee shall decide, with or without a hearing, whether the action is a complex case within 30 days after the filing of the response to the designating party's motion. The court may decide on its own motion, or on a noticed motion by any party, that a civil action is a complex case or that an action previously declared to be a complex case is not a complex case. This ruling may be made at any time during the pendency of an action, for good cause shown. If the court finds that an attorney or party has made an allegation as to complexity which was not made in good faith, the court, upon motion or upon its own initiative, shall make such orders with regard to such



conduct as are just, including, among others, any action authorized under Rule 11(a) of these Rules.

(7) **Not Appealable.** Parties shall not have the right to appeal the court's decision regarding the designation of an action as complex or noncomplex.

#### COMMENT

Proposed Rule 8(i) is intended to establish a process by which the parties can alert the court to the complex nature of their dispute. However, the determination that a case is, in fact, eligible for the complex litigation program is to be made by the presiding judge or designee. The parties are not to self-select in the absence of a determination by the court on good cause shown.

Proposed Rule 8(i) sets the standard for determining whether a case is eligible for participation in the complex case program. It also sets out a process for designating a case as complex and for contesting the designation. A ruling on whether a case is eligible for the complex case program is not appealable to promote early final resolution of the issue of eligibility for participation in the program. This is in keeping with one of the overall goals of the program: to achieve finality for complex cases in an expedited manner.

## Rule 8(i) Program Designation Certification Form

IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF \_\_\_\_\_

_____	)	
Plaintiff	)	Case No. _____
	)	
vs.	)	9 Certification of Complexity
	)	9 Joint Certification of Complexity
	)	9 Controvening Certification
_____	)	
Defendant	)	
_____	)	

☐ The (undersigned certifies) (parties certify) that this action is a complex case for the following reasons:

- 9 Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve.
- 9 Management of a large number of witnesses or a substantial amount of documentary evidence.
- 9 Management of a large number of separately represented parties;
- 9 Coordination with the following related actions pending in one or more courts in other counties, states or countries, or in a federal court: \_\_\_\_\_
- 9 Substantial post judgment judicial supervision
- 9 The case would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law.
- 9 Inherently complex legal issues.
- 9 Factors justifying the expeditious resolution of an otherwise complex dispute
- 9 The following other factor(s) warranting designation as a complex case, in the interest of justice:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ The (undersigned certifies) (parties certify) that this action is not a complex case for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
(Attorney for) (Plaintiff) (Defendant)

\_\_\_\_\_  
(Attorney for) (Plaintiff) (Defendant)

[This Certification must be accompanied by a motion]

**[new] Rule 16.3. Initial Case Management Conference in Cases Assigned to the Complex Civil Litigation Program**

(a) **Subjects for Consideration.** Once a case is determined to be a complex civil case, an initial case management conference with all parties represented shall be conducted at the earliest practical date, and a Case Management Order issued by the court promptly thereafter. Among the subjects that should be considered at such a conference are:

- (1) Status of parties and pleadings
- (2) Determining whether severance, consolidation, or coordination with other actions is desirable
- (3) Scheduling motions to dismiss or other preliminary motions
- (4) Scheduling class certification motions, if applicable
- (5) Scheduling discovery proceedings, setting limits on discovery and determining whether to appoint a discovery master
- (6) Issuing protective orders
- (7) Appointing liaison counsel and admission of non-resident counsel
- (8) Scheduling settlement conferences
- (9) Notwithstanding Rule 26.1, the establishment and timing of disclosure requirements
- (10) Scheduling expert disclosures and whether sequencing of expert disclosures is warranted
- (11) Scheduling dispositive motions
- (12) Adopting a uniform numbering system for documents and establishing a document depository
- (13) Determining whether electronic service of discovery materials and pleadings is warranted
- (14) Organizing a master list of contact information for counsel

- (15) Determining whether expedited trial proceedings are desired or appropriate
- (16) Scheduling further conferences as necessary
- (17) Use of technology, videoconferencing and/or teleconferencing
- (18) Determination of whether the issues can be resolved by summary judgment, summary trial, trial to the court, jury trial, or some combination thereof
- (19) Such other matters as the court or the parties deem appropriate to manage or expedite the case

**(b) Meeting of Parties Before Conference.** Before the date set by the court for the initial case management conference, all parties who have appeared in the action, or their attorneys, shall meet and confer concerning the matters to be raised at the conference, shall attempt in good faith to reach agreement on as many case management issues as possible, and shall submit a joint report to the court no later than seven (7) days before the initial case management conference. A party who fails to participate in good faith shall be subject to sanctions.

**(c) Purpose of Conference.** The purpose of the initial case management conference is to identify the essential issues in the litigation and to avoid unnecessary, burdensome or duplicative discovery and other pretrial procedures in the course of preparing for trial of those issues.

**(d) Establishing Time Limits.** Time limits should be regularly used to expedite major phases of complex civil cases. Time limits should be established early, tailored to the circumstances of each case, firmly and fairly maintained, and accompanied by other methods of sound judicial management. The date of the final pre-trial conference shall be set by the court as early as possible with a trial date to follow within 60 days of the final pre-trial conference.

**(e) Commencement of Discovery.** Absent an order of the court, or by stipulation of the parties filed with the court, no party may initiate discovery or disclosure in a complex civil case until the court has issued a Case Management Order following the initial case management conference.

#### COMMENT

**Justification for this rule:** Rule 16.3 is intended to supplement the Arizona Rules of Civil Procedure in a manner that will provide

judges and litigants with appropriate procedural mechanisms for the fair, efficient and expeditious management of discovery, disclosures, motions, service of documents and pleadings, communications between and among counsel and the court, trial, and other aspects of complex civil litigation. Other than as specifically set forth, cases assigned to the complex litigation program are not exempt from any normally applicable rule of procedure, except to the extent the trial judge may order otherwise. Proposed Rule 16.3 should be available to any trial judge who wishes to follow it, in whole or in part, in managing a civil dispute, even in cases that are not formally assigned to a complex litigation program.

**Case Management Resources.** In considering procedures for management of a complex civil case, the court, in its discretion, may look for guidance to the Manual for Complex Litigation published by the Federal Judicial Center and to similar complex litigation manuals used by courts in other jurisdictions.

**[new] Rule 39.1. Trial of Cases Assigned to the Complex Civil Litigation Program**

The court should employ trial procedures as are deemed necessary or appropriate to facilitate a just, speedy and efficient resolution of the case, including, but not limited to, time limits and allocation of trial time, sequencing of evidence and arguments, bifurcation of issues or claims, advance scheduling of witnesses and other evidence, pre-trial admission of exhibits or other evidence, electronic presentation of evidence, jury selection and juror participation issues and other means of managing or expediting the trial of a complex case.

**COMMENT**

**Justification for this rule:** See 16.3.